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SENATE BILL 341

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; LOWERING THE PRESUMED STANDARD OF INTOXICATION FOR DETERMINING IF A PERSON IS DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders him incapable of
2 safely driving a vehicle to drive a vehicle within this state.

3 C. It is unlawful for a person who has an alcohol
4 concentration of [~~eight~~] six one hundredths or more in his
5 blood or breath to drive a vehicle within this state.

6 D. Aggravated driving while under the influence of
7 intoxicating liquor or drugs consists of a person who:

8 (1) has an alcohol concentration of [~~sixteen~~]
9 twelve one hundredths or more in his blood or breath while
10 driving a vehicle within this state;

11 (2) has caused bodily injury to a human being
12 as a result of the unlawful operation of a motor vehicle while
13 driving under the influence of intoxicating liquor or drugs; or

14 (3) refused to submit to chemical testing, as
15 provided for in the Implied Consent Act, and in the judgment of
16 the court, based upon evidence of intoxication presented to the
17 court, was under the influence of intoxicating liquor or drugs.

18 E. [~~Every~~] A person under first conviction pursuant
19 to this section shall be punished, notwithstanding the
20 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
21 not more than ninety days or by a fine of not more than five
22 hundred dollars (\$500), or both; provided that if the sentence
23 is suspended in whole or in part or deferred, the period of
24 probation may extend beyond ninety days but shall not exceed
25 one year. Upon a first conviction pursuant to this section, an

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1 offender may be sentenced to not less than forty-eight hours of
2 community service or a fine of three hundred dollars (\$300).

3 The offender shall be ordered by the court to participate in
4 and complete a screening program described in Subsection H of
5 this section and to attend a driver rehabilitation program for
6 alcohol or drugs, also known as a "DWI school", approved by the
7 bureau and also may be required to participate in other
8 rehabilitative services as the court shall determine to be
9 necessary. In addition to those penalties, when an offender
10 commits aggravated driving while under the influence of
11 intoxicating liquor or drugs, the offender shall be sentenced
12 to not less than forty-eight consecutive hours in jail. If an
13 offender fails to complete, within a time specified by the
14 court, any community service, screening program, treatment
15 program or DWI school ordered by the court, the offender shall
16 be sentenced to not less than an additional forty-eight
17 consecutive hours in jail. Any jail sentence imposed pursuant
18 to this subsection for failure to complete, within a time
19 specified by the court, any community service, screening
20 program, treatment program or DWI school ordered by the court
21 or for aggravated driving while under the influence of
22 intoxicating liquor or drugs shall not be suspended, deferred
23 or taken under advisement. On a first conviction pursuant to
24 this section, any time spent in jail for the offense prior to
25 the conviction for that offense shall be credited to any term

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1 of imprisonment fixed by the court. A deferred sentence
2 pursuant to this subsection shall be considered a first
3 conviction for the purpose of determining subsequent
4 convictions.

5 F. A second or third conviction pursuant to this
6 section shall be punished, notwithstanding the provisions of
7 Section 31-18-13 NMSA 1978, by imprisonment for not more than
8 three hundred sixty-four days or by a fine of not more than one
9 thousand dollars (\$1,000), or both; provided that if the
10 sentence is suspended in whole or in part, the period of
11 probation may extend beyond one year but shall not exceed five
12 years. Notwithstanding any provision of law to the contrary
13 for suspension or deferment of execution of a sentence:

14 (1) upon a second conviction, [~~each~~] an
15 offender shall be sentenced to a jail term of not less than
16 seventy-two consecutive hours, forty-eight hours of community
17 service and a fine of five hundred dollars (\$500). In addition
18 to those penalties, when an offender commits aggravated driving
19 while under the influence of intoxicating liquor or drugs, the
20 offender shall be sentenced to a jail term of not less than
21 ninety-six consecutive hours. If an offender fails to
22 complete, within a time specified by the court, any community
23 service, screening program or treatment program ordered by the
24 court, the offender shall be sentenced to not less than an
25 additional seven consecutive days in jail. A penalty imposed

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1 pursuant to this paragraph shall not be suspended or deferred
2 or taken under advisement; and

3 (2) upon a third conviction, an offender shall
4 be sentenced to a jail term of not less than thirty consecutive
5 days and a fine of seven hundred fifty dollars (\$750). In
6 addition to those penalties, when an offender commits
7 aggravated driving while under the influence of intoxicating
8 liquor or drugs, the offender shall be sentenced to a jail term
9 of not less than sixty consecutive days. If an offender fails
10 to complete, within a time specified by the court, any
11 screening program or treatment program ordered by the court,
12 the offender shall be sentenced to not less than an additional
13 sixty consecutive days in jail. A penalty imposed pursuant to
14 this paragraph shall not be suspended or deferred or taken
15 under advisement.

16 G. Upon a fourth or subsequent conviction pursuant
17 to this section, an offender is guilty of a fourth degree
18 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
19 sentenced to a jail term of not less than six months, which
20 shall not be suspended or deferred or taken under advisement.

21 H. Upon any conviction pursuant to this section, an
22 offender shall be required to participate in and complete,
23 within a time specified by the court, an alcohol or drug abuse
24 screening program and, if necessary, a treatment program
25 approved by the court. The requirement imposed pursuant to

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1 this subsection shall not be suspended, deferred or taken under
2 advisement.

3 I. Upon a first conviction for aggravated driving
4 while under the influence of intoxicating liquor or drugs
5 pursuant to the provisions of Subsection D of this section,
6 as a condition of probation, an offender shall be required to
7 have an ignition interlock device installed and operating for a
8 period of one year on all motor vehicles driven by the
9 offender, pursuant to rules adopted by the bureau. Unless
10 determined by the sentencing court to be indigent, the offender
11 shall pay all costs associated with having an ignition
12 interlock device installed on the appropriate motor vehicles.
13 If an offender drives a motor vehicle that does not have an
14 ignition interlock device installed on the motor vehicle, the
15 offender may be in violation of the terms and conditions of his
16 probation.

17 J. Upon a first conviction for driving while under
18 the influence of intoxicating liquor or drugs pursuant to the
19 provisions of Subsection A, B or C of this section, as a
20 condition of probation, an offender may be required to have an
21 ignition interlock device installed and operating for a period
22 of one year on all motor vehicles driven by the offender,
23 pursuant to rules adopted by the bureau. Unless determined by
24 the sentencing court to be indigent, the offender shall pay all
25 costs associated with having an ignition interlock device

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1 installed on the appropriate motor vehicles. If an offender
2 drives a motor vehicle that does not have an ignition interlock
3 device installed on the motor vehicle, the offender may be in
4 violation of the terms and conditions of his probation.

5 K. Upon any subsequent conviction pursuant to this
6 section, as a condition of probation, a subsequent offender
7 shall be required to have an ignition interlock device
8 installed and operating for a period of at least one year on
9 all motor vehicles driven by the subsequent offender, pursuant
10 to rules adopted by the bureau. Unless determined by the
11 sentencing court to be indigent, the subsequent offender shall
12 pay all costs associated with having an ignition interlock
13 device installed on the appropriate motor vehicles. If a
14 subsequent offender drives a motor vehicle that does not have
15 an ignition interlock device installed on the motor vehicle,
16 the subsequent offender may be in violation of the terms and
17 conditions of his probation.

18 L. In the case of a first, second or third offense
19 under this section, the magistrate court has concurrent
20 jurisdiction with district courts to try the offender.

21 M A conviction pursuant to a municipal or county
22 ordinance in New Mexico or a law of any other jurisdiction,
23 territory or possession of the United States that is equivalent
24 to New Mexico law for driving while under the influence of
25 intoxicating liquor or drugs, and that prescribes penalties for

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1 driving while under the influence of intoxicating liquor or
2 drugs, shall be deemed to be a conviction pursuant to this
3 section for purposes of determining whether a conviction is a
4 second or subsequent conviction.

5 N. In addition to any other fine or fee [~~which~~
6 that may be imposed pursuant to the conviction or other
7 disposition of the offense under this section, the court may
8 order the offender to pay the costs of any court-ordered
9 screening and treatment programs.

10 O. As used in this section:

11 (1) "bodily injury" means an injury to a
12 person that is not likely to cause death or great bodily harm
13 to the person, but does cause painful temporary disfigurement
14 or temporary loss or impairment of the functions of any member
15 or organ of the person's body; and

16 (2) "conviction" means an adjudication of
17 guilt and does not include imposition of a sentence."

18 Section 2. Section 66-8-102.1 NMSA 1978 (being Laws 1982,
19 Chapter 102, Section 2, as amended) is amended to read:

20 "66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the
21 complaint or information alleges a violation of Section
22 66-8-102 NMSA 1978, any plea of guilty thereafter entered in
23 satisfaction of the charges shall include at least a plea of
24 guilty to the violation of one of the subsections of Section
25 66-8-102 NMSA 1978, and no other disposition by plea of guilty

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1 to any other charge in satisfaction of the charge shall be
2 authorized if the results of a test performed pursuant to the
3 Implied Consent Act disclose that the blood or breath of the
4 person charged contains an alcohol concentration of [~~eight~~] six
5 one hundredths or more. "

6 Section 3. Section 66-8-110 NMSA 1978 (being Laws 1978,
7 Chapter 35, Section 518, as amended) is amended to read:

8 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
9 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

10 A. The results of a test performed pursuant to the
11 Implied Consent Act may be introduced into evidence in any
12 civil action or criminal action arising out of the acts alleged
13 to have been committed by the person tested for driving a motor
14 vehicle while under the influence of intoxicating liquor or
15 drugs.

16 B. When the blood or breath of the person tested
17 contains:

18 (1) an alcohol concentration of five one
19 hundredths or less, it shall be presumed that the person was
20 not under the influence of intoxicating liquor; or

21 (2) an alcohol concentration of more than five
22 one hundredths but less than [~~eight~~] six one hundredths, no
23 presumption shall be made that the person either was or was not
24 under the influence of intoxicating liquor. However, the
25 amount of alcohol in the person's blood may be considered with

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1 other competent evidence in determining whether the person was
2 under the influence of intoxicating liquor.

3 C. When the blood or breath of the person tested
4 contains an alcohol concentration of [~~eight~~] six one hundredths
5 or more, the arresting officer shall charge him with a
6 violation of Section 66-8-102 NMSA 1978.

7 D. When a person is less than twenty-one years of
8 age and the blood or breath of the person contains an alcohol
9 concentration of two one hundredths or more, the person's
10 driving privileges shall be revoked pursuant to the provisions
11 of the Implied Consent Act.

12 E. The determination of alcohol concentration shall
13 be based on the grams of alcohol in one hundred milliliters of
14 blood or the grams of alcohol in two hundred ten liters of
15 breath.

16 F. The presumptions in Subsection B of this section
17 do not limit the introduction of other competent evidence
18 concerning whether the person was under the influence of
19 intoxicating liquor.

20 G. If a person is convicted of driving a motor
21 vehicle while under the influence of intoxicating liquor, the
22 trial judge shall be required to inquire into the past driving
23 record of the person before sentence is entered in the matter."

24 Section 4. Section 66-8-111 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 519, as amended) is amended to read:

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1 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
2 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --

3 A. If a person under arrest for violation of an
4 offense enumerated in the Motor Vehicle Code refuses upon
5 request of a law enforcement officer to submit to chemical
6 tests designated by the law enforcement agency as provided in
7 Section 66-8-107 NMSA 1978, none shall be administered except
8 when a municipal judge, magistrate or district judge issues a
9 search warrant authorizing chemical tests as provided in
10 Section 66-8-107 NMSA 1978 upon his finding in a law
11 enforcement officer's written affidavit that there is probable
12 cause to believe that the person has driven a motor vehicle
13 while under the influence of alcohol or a controlled substance,
14 thereby causing the death or great bodily injury of another
15 person, or there is probable cause to believe that the person
16 has committed a felony while under the influence of alcohol or
17 a controlled substance and that chemical tests as provided in
18 Section 66-8-107 NMSA 1978 will produce material evidence in a
19 felony prosecution.

20 B. The department, upon receipt of a statement
21 signed under penalty of perjury from a law enforcement officer
22 stating the officer's reasonable grounds to believe the
23 arrested person had been driving a motor vehicle within this
24 state while under the influence of intoxicating liquor or
25 [~~drug~~] drugs and that, upon his request, the person refused to

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1 submit to a chemical test after being advised that failure to
2 submit could result in revocation of his privilege to drive,
3 shall revoke the person's New Mexico driver's license or any
4 nonresident operating privilege for a period of one year or
5 until all conditions for license reinstatement are met,
6 whichever is later.

7 C. The department, upon receipt of a statement
8 signed under penalty of perjury from a law enforcement officer
9 stating the officer's reasonable grounds to believe the
10 arrested person had been driving a motor vehicle within this
11 state while under the influence of intoxicating liquor and that
12 the person submitted to chemical testing pursuant to Section
13 66-8-107 NMSA 1978 and the test results indicated an alcohol
14 concentration of [~~eight~~] six one hundredths or more in the
15 person's blood or breath if the person is twenty-one years of
16 age or older or an alcohol concentration of two one hundredths
17 or more in the person's blood or breath if the person is less
18 than twenty-one years of age, shall revoke the person's license
19 or permit to drive or his nonresident operating privilege for a
20 period of:

21 (1) ninety days or until all conditions for
22 license reinstatement are met, whichever is later, if the
23 person is twenty-one years of age or older;

24 (2) six months or until all conditions for
25 license reinstatement are met, whichever is later, if the

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1 person is less than twenty-one years of age and has not
2 previously had his license revoked pursuant to the provisions
3 of this section, notwithstanding any provision of the
4 Children's Code; or

5 (3) one year or until all conditions for
6 license reinstatement are met, whichever is later, if the
7 person has previously had his license revoked pursuant to the
8 provisions of this section, notwithstanding the provisions of
9 Paragraph (1) or (2) of this subsection or any provision of the
10 Children's Code.

11 D. The determination of alcohol concentration shall
12 be based on the grams of alcohol in one hundred milliliters of
13 blood or the grams of alcohol in two hundred ten liters of
14 breath.

15 E. If the person subject to the revocation
16 provisions of this section is a resident or will become a
17 resident within one year and is without a license to operate a
18 motor vehicle in this state, the department shall deny the
19 issuance of a license to him for the appropriate period of time
20 as provided in Subsections B and C of this section.

21 F. A statement signed by a law enforcement officer,
22 pursuant to the provisions of Subsection B or C of this
23 section, shall be sworn to by the officer or shall contain a
24 declaration substantially to the effect: "I hereby declare
25 under penalty of perjury that the information given in this

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1 statement is true and correct to the best of my knowledge.". A
2 law enforcement officer who signs a statement, knowing that the
3 statement is untrue in any material issue or matter, is guilty
4 of perjury as provided in Section 66-5-38 NMSA 1978. "

5 Section 5. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
6 Chapter 72, Section 7, as amended) is amended to read:

7 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
8 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
9 HEARING.--On behalf of the department, a law enforcement
10 officer requesting a chemical test or directing the
11 administration of a chemical test pursuant to Section 66-8-107
12 NMSA 1978 shall serve immediate written notice of revocation
13 and of right to a hearing on a person who refuses to permit
14 chemical testing or on a person who submits to a chemical test
15 the results of which indicate an alcohol concentration of
16 [~~eight~~] six one hundredths or more in the person's blood or
17 breath if the person is twenty-one years of age or older or an
18 alcohol concentration of two one hundredths or more in the
19 person's blood or breath if the person is less than twenty-one
20 years of age. Upon serving notice of revocation, the law
21 enforcement officer shall take the license or permit of the
22 driver, if any, and issue a temporary license valid for twenty
23 days or, if the driver requests a hearing pursuant to Section
24 66-8-112 NMSA 1978, valid until the date the department issues
25 the order following that hearing; provided that no temporary

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1 license shall be issued to a driver without a valid license or
2 permit. The law enforcement officer shall send the person's
3 driver's license to the department along with the signed
4 statement required pursuant to Section 66-8-111 NMSA 1978. "

5 Section 6. Section 66-8-112 NMSA 1978 (being Laws 1978,
6 Chapter 35, Section 520, as amended) is amended to read:

7 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
8 NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW--

9 A. The effective date of revocation pursuant to
10 Section 66-8-111 NMSA 1978 is twenty days after notice of
11 revocation or, if the person whose license or privilege to
12 drive is being revoked or denied requests a hearing pursuant to
13 this section, the date that the department issues the order
14 following that hearing. The date of notice of revocation is:

15 (1) the date the law enforcement officer
16 serves written notice of revocation and of right to a hearing
17 pursuant to Section 66-8-111.1 NMSA 1978; or

18 (2) in the event the results of a chemical
19 test cannot be obtained immediately, the date notice of
20 revocation is served by mail by the department. This notice of
21 revocation and of right to a hearing shall be sent by certified
22 mail and shall be deemed to have been served on the date borne
23 by the return receipt showing delivery, refusal of the
24 addressee to accept delivery or attempted delivery of the
25 notice at the address obtained by the arresting law enforcement

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1 officer or on file with the department.

2 B. Within ten days after receipt of notice of
3 revocation pursuant to Subsection A of this section, a person
4 whose license or privilege to drive is revoked or denied or the
5 person's agent may request a hearing. The hearing request
6 shall be made in writing and shall be accompanied by a payment
7 of twenty-five dollars (\$25.00) or a sworn statement of
8 indigency on a form provided by the department. A standard for
9 indigency shall be established pursuant to regulations adopted
10 by the department. Failure to request a hearing within ten
11 days shall result in forfeiture of the person's right to a
12 hearing. Any person less than eighteen years of age who fails
13 to request a hearing within ten days shall have notice of
14 revocation sent to his parent, guardian or custodian by the
15 department. A date for the hearing shall be set by the
16 department, if practical, within thirty days after receipt of
17 notice of revocation. The hearing shall be held in the county
18 in which the offense for which the person was arrested took
19 place.

20 C. The department may postpone or continue any
21 hearing on its own motion or upon application from the person
22 and for good cause shown for a period not to exceed ninety days
23 from the date of notice of revocation and provided that the
24 department extends the validity of the temporary license for
25 the period of the postponement or continuation.

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1 D. At the hearing, the department or its agent may
2 administer oaths and may issue subpoenas for the attendance of
3 witnesses and the production of relevant books and papers.

4 E. The hearing shall be limited to the issues:

5 (1) whether the law enforcement officer had
6 reasonable grounds to believe that the person had been driving
7 a motor vehicle within this state while under the influence of
8 intoxicating liquor or drugs;

9 s (2) whether the person was arrested;

10 (3) whether this hearing is held no later than
11 ninety days after notice of revocation; and either

12 (4)

13 (a) whether the person refused to submit
14 to a test upon request of the law enforcement officer; and

15 (b) whether the law enforcement officer
16 advised that the failure to submit to a test could result in
17 revocation of the person's privilege to drive; or

18 (5)

19 (a) whether the chemical test was
20 administered pursuant to the provisions of the Implied Consent
21 Act; and

22 (b) the test results indicated an
23 alcohol concentration of [~~eight~~] six one hundredths or more in
24 the person's blood or breath if the person is twenty-one years
25 of age or older or an alcohol concentration of two one

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1 hundredths or more in the person's blood or breath if the
2 person is less than twenty-one years of age.

3 F. The department shall enter an order sustaining
4 the revocation or denial of the person's license or privilege
5 to drive if the department finds that:

6 (1) the law enforcement officer had reasonable
7 grounds to believe the driver was driving a motor vehicle while
8 under the influence of intoxicating liquor or ~~[drug]~~ drugs;

9 (2) the person was arrested;

10 (3) this hearing is held no later than ninety
11 days after notice of revocation; and

12 (4) the person either refused to submit to the
13 test upon request of the law enforcement officer after the law
14 enforcement officer advised him that his failure to submit to
15 the test could result in the revocation of his privilege to
16 drive or that a chemical test was administered pursuant to the
17 provisions of the Implied Consent Act and the test results
18 indicated an alcohol concentration of ~~[eight]~~ six one
19 hundredths or more if the person is twenty-one years of age or
20 older or an alcohol concentration of two one hundredths or more
21 if the person is less than twenty-one years of age.

22 If one or more of the elements set forth in Paragraphs (1)
23 through (4) of this subsection are not found by the department,
24 the person's license shall not be revoked.

25 G. A person adversely affected by an order of the

1 department may seek review within thirty days in the district
2 court in the county in which the offense for which the person
3 was arrested took place. The district court, upon thirty days'
4 written notice to the department, shall hear the case. On
5 review, it is for the court to determine only whether
6 reasonable grounds exist for revocation or denial of the
7 person's license or privilege to drive based on the record of
8 the administrative proceeding.

9 H. Any person less than eighteen years of age shall
10 have results of his hearing forwarded by the department to his
11 parent, guardian or custodian. "

12 Section 7. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2003.

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